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|---------------------------------|---|-------------|
| In re Application of | : | |
| KWON et al. | : | DECISION ON |
| Application No.: 10/031,123 | : | |
| Filing Date: 09 January 2002 | : | PETITION |
| Attorney's Docket No.: DE1325 | : | |
| For: MODIFIED HUMAN GRANULOCYTE | : | |
| COLONY STIMULATING FACTOR AND | : | |
| PROCESS FOR PRODUCING SAME | : | |

This is in response to applicant's "Petition to Change the Filing Date" filed in the United States Patent and Trademark Office (USPTO) on 05 February 2003, requesting a new filing receipt for the above referenced application.

BACKGROUND

On 09 January 2002, applicant submitted a Transmittal Letter (Form PTO-1390) requesting processing as a national stage application under 35 U.S.C. 371, a copy of the international application, a purported English translation thereof and a substitute specification. The first sentence of the substitute specification submitted indicated the following: "This application is a continuation patent application of PCT Patent Application No. PCT/KR00/00733 which was filed on July 7, 2000, designating the United States of America, now abandoned." Applicant submitted a declaration executing the attached specification and signed by the inventors. The declaration states "This is a continuation application of International Application No. PCT/KR00/00733 filed on July 7, 2000 and designating the United States of America." The papers were treated as a national stage filing under 35 U.S.C. 371 and assigned application no.10/031,123.

On 13 March 2002, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) & (b), identifying the application by the international application number and international filing date.

Applicants responded on 13 May 2002, *inter alia*, with a copy of the executed Declaration and Power of Attorney, indicating that the declaration was filed with the original application. Applicants submitted a new diskette containing a computer readable form of the sequence listing and paper copy thereof.

On 08 August 2002, a Notification of Defective Response was mailed to applicant

indicating that (1) the \$130 surcharge for filing the declaration after the thirty month period was required and (2) the nucleotide and/or amino acid sequence disclosure contained in the application did not comply with requirements set forth in 37 CFR 1.821-1.825 and was required. Applicants responded to the Notification of Defective Response on 05 September 2002 with a new diskette and showing that authorization to charge fees had been provided.

On 02 January 2003, a Notice of Acceptance was mailed to applicant indicating a 35 U.S.C. 371 date of 13 May 2002.

On 03 February 2003, applicant filed the instant petition requesting that a new filing receipt to indicate a filing date of 09 January 2002.

DISCUSSION

As explained at Section 1893.03(a) of the Manual of Patent Examining Procedure (MPEP), any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

On 09 January 2002, applicant filed the basic national fee for entry into the national stage in the USPTO and a transmittal letter identifying the application as a filing under 35 U.S.C. 371. However, a claim of continuation status of PCT/KR00/00733 is made in the accompanying specification, where the following statement appears at page 1 thereof: "This application is a continuation patent application of PCT Patent Application No. PCT/KR00/00733, which was filed on July 7, 2000, designating the United States of America, now abandoned." Applicant's benefit claim under 35 U.S.C. 120 to the international application made at the top of the first page of his specification is inconsistent with a filing to treat the present application as the national stage of PCT/KR00/00733 under 35 U.S.C. 371.

In view of the above noted conflicting instructions, the papers are considered as having been filed under 35 U.S.C. 111(a).

The Notification of Acceptance mailed on 02 January 2003 is hereby VACATED.

CONCLUSION

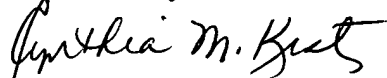
For the reasons above, the present application will be treated as a filing under 35 U.S.C. 111(a). The "Notification of Acceptance" (Form PCT/DO/EO/903) mailed 02 January 2003 is hereby **VACATED**.

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The application is being forwarded for the National Stage Processing Branch of the Office of PCT Operations to remove the Article 20 papers communicated from the International Bureau to the United States of America.

The application will then be forwarded to the Office of Initial Patent Examination (OIPE) for processing the present application as a filing under 35 U.S.C. 111(a) and having a filing date of 09 January 2002. A new filing receipt will be issued.



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